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CONTRACTING FOR COMPASSION IN JAPANESE BUDDHISM

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## **Contracting for Compassion in Japanese Buddhism**

**By J. Mark Ramseyer\***

Abstract: In the 1960s, Japanese women began asking temples to perform commemorative ceremonies for the fetuses or children they had aborted. They still do. Physicians have been able to perform abortions legally since 1952, and many women have had them. The ceremonies do not fit within the classic rituals offered by the temples, but many Japanese women find them helpful. They ask for the services. The temples respond.

The temples charge for these memorial services. They rely on such fee-for-service arrangements for an increasingly important segment of their finances. Traditionally, priests had stood ready to offer their parishioners counseling and ritual as needed during the existentially troubling passages in their lives. In exchange, their local communities had effectively kept the temple on retainer. This no longer works. The temples stand in low levels of tension with the surrounding society (as Stark put it). As such, they cannot trust their parishioners to give voluntarily. Instead, they had counted on the constraining power of the tightly intertwined social network within the local community.

Over the course of the 20th century, Japanese migrated out of these tightly structured villages to the often anomic cities. Without a coercive village structure to enforce giving, the low-tension temples found themselves without their effective retainer. With the first-best contract unavailable, many temples have turned to fee-for-service arrangements -- of which the abortion-related ritual is merely the most notorious. Ironically, the new environment presents an entirely different challenge: temples now find themselves competing with internet-based priest-dispatch services.

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Hike anywhere in the Japanese mountains, and you will take narrow paths through dense forests. You will grab tree roots to pull yourself up mud-drenched furrows. You will scale the side of rocks.

No matter which mountain you climb, in shallow clearings by the side of your path you will occasionally find a small statuette. Eyes closed, the young child will have a peaceful expression. Usually, he (or she; the sex is often ambiguous) will wear a serene smile.

He is jizo (Kṣitigarbha, in Sanskrit), guardian of children and travelers. He is a bodhisattva -- in Japanese Buddhism, a being who has reached enlightenment but who, out of compassion for those still suffering, has declined to enter paradise. He remains instead in the mortal world to comfort and guide the rest of us.

A friend of mine recalled a hike he had taken some 15 years earlier. As his group passed a jizo, an older woman in the group had stopped, pressed her face into her hands, and started to sob. "Please forgive me," she seemed to be muttering. After a pause, his group started to walk again. The woman wiped her tears, and privately explained to my friend that the Buddha had once sent her a baby but that the baby had never been born. Beyond that, my friend did not ask.

Chances are the jizo by the path will wear a red bib. An anonymous mother sewed it for him in penance. He will also sport a red cap, knitted by another mother in penance. He may even have offerings of a rice ball and a tangerine or two in front of him.

Pay attention when you return to Tokyo, and you will likely find the same young fellow near your home. He may stand at a small intersection. He may hide in a nook by the side of the road. He will be wearing a red bib and cap and, if lucky, have a rice ball and one or two tangerines.

Sometime during the first decades after World War II, jizo the guardian of children and travelers became the savior of miscarried and aborted souls. As the abortion rate skyrocketed with medical technology and post-war legalization, jizo became the savior of the boys and girls "who were not able to be born" -- as temple pamphlets so delicately put it.

Increasingly, temples began to offer memorial services for these children who "were not able to be born." The temples called the services "mizuko kuyo" ("mizuko" referring to the fetus or unborn child, and "kuyo" being the memorial ceremonies) and charged for the ritual. Many women ignored temples: they had their abortions, and moved on. Some, however, found the experience more troubling and turned to the temples for comfort. In both Japan and the west, scholars claimed to be outraged at this "commercialization" within the religious community.

The fee-for-service arrangement for the memorial services reflects a fundamental economic shift within the Buddhist church. After introducing the mizuko kuyo, I turn to the financial constraints on the Buddhist community. As a church rather than sect (as Weber and Troelsch called it) -- or a low-tension rather than high-tension religious group (as Rodney Stark put it) -- Japanese Buddhism has not demanded much of its parishioners. Instead, priests have stood ready to offer counseling and ritual as needed during existentially troubling passages in life. In exchange, local communities effectively kept the temple on retainer. The temples cannot rely on their parishioners giving voluntarily; low-tension churches never can. Instead, they counted on local parishioners to enforce the giving on each other through their tightly intertwined social network.

Over the course of the 20th century, Japanese migrated en masse from tightly structured villages to often anomic cities. Without a coercive village structure, the low-tension temples can no longer collect the effective retainer-fee for standing ready to counsel and guide their parishioners through the inevitable crises in life. With that first-best contract unavailable, many temples have come to rely heavily on fee-for-service contracts. And among those contracts, the most controversial has been mizuko kuyo.

The temples seemed to embody the metaphorical nexus-of-contracts so basic to those of us in corporate law & economics: a nexus of religious service contracts. Unfortunately for the traditional temples, a stand-alone temple with one or two full-time priests may not constitute the most cost-effective way to provide these services. Increasingly, temples face competition from internet-based (sometimes on Amazon.com) priest-dispatch services. The services dispense with the overhead associated with a physical building, and allow the priests to exploit the specialization possible with scale economies. The services present a question: do the temples constitute anything more than a nexus of contracts? They do, of course. But the internet-based services in fact present a question that is if anything crueller still: how much of a premium are Japanese willing to pay for that temple value-added

I begin with the mizuko kuyo debate (Section I). The practice introduces the financial constraint that plagues the modern Buddhist church (Sections II, III). The churches have taken a variety of approaches to resolving the problems -- but in many ways the problem is inherent in the nature of a church rather than a sect, a low-tension rather than a high-tension organization. The problems faced by the Japanese temples mirror closely, in other words, the problems plaguing the modern Protestant mainline (Sections IV, V).

## I. The Abortion Ritual

### A. The Academic Debate:

Within the field of Japanese religious studies, the abortion ritual of mizuko kuyo generated an unusually sharp exchange.<sup>1</sup> Bardwell Smith was one of the first scholars to discuss the phenomenon in the English-language literature.<sup>2</sup> Smith described it sympathetically, and as a largely therapeutic response to a woman's close encounter with death. The ritual reflected the "emotional problems encountered by large numbers of Japanese women following an abortion experience," said he, and allowed them "to acknowledge death, even a death that one has willed."<sup>3</sup> Not "all women," and perhaps not even "most women" -- but a "large number of women" found the experience troubling, and many of them turned to mizuko kuyo.

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<sup>1</sup> Elizabeth G. Harrison, *Strands of Complexity: The Emergence of Mizuko Kuyo in Postwar Japan*, 67 *J. Am. Acad. Rel.* 769, 770 (1999), writes that the services "generally consist of several basic elements: an invocation a verbal listing of the dead or of those commissioning the service, chanting of texts as offerings to accrue some kind of merit for the dead, prayers to appropriate deities to watch over the dead, an invitation to participants to come forward to make an offering. The giving of a name ... and the creation of a place ... to mark the continued presence of the dead are also common elements in the practice of mizuko kuyo ...." See generally Jason Morgan, *The History of the Unspeakable: Shimokawa Masaharu's The Forgotten History of Evacuation*, 19 *Inter-Asia Cultural Studies* 644, 644 (2018).

<sup>2</sup> Bardwell Smith, *Buddhism and Abortion in Contemporary Japan: Mizuko Kuyo and the Confrontation with Death*, 15 *Japanese J. Religious Stud.* 3 (1988).

<sup>3</sup> *Id.*, at 3, 9.

The temples, Smith continued, did not hold these mizuko ceremonies because Buddhism taught "that human life begins at the instant of conception" -- though Buddhism does teach that.<sup>4</sup> Instead, it was "more likely the reverse." In Smith's words, Buddhism endorsed "a profoundly human experience, namely, that nothing less than a human life is at issue."<sup>5</sup>

William LaFleur published the first book-length study of the phenomenon, and continued Smith's largely sympathetic approach.<sup>6</sup> LaFleur noted the way that Japanese Buddhist cosmology did not draw the line between human and non-human life as sharply as did the Christian tradition. From the moment of conception, the fetus or child (the temples and parishioners always call it a child or baby, never a fetus) clearly had human life. Yet that life was not yet the human being that the child would become, and neither was the newborn child. Consistent with this approach, Japan does have a long history of infanticide.<sup>7</sup>

Within this world, LaFleur details the tension that Japanese men and women (but especially women) feel as they contemplate a pregnancy they had not wanted. The tension is between (i) respect for the life of the child-to-be, and (ii) hopes for the quality of the life for that new child and the other members of the family. Although Buddhists condemned the taking of the new life, explains LaFleur, they also respected this tension. Usually, he explained, they "took the position that abortion was what we call a 'necessary evil' -- although their term was a 'necessary sorrow.'"<sup>8</sup>

A woman who experiences her abortion as sorrowful may find two potentially benefits from mizuko kuyo. First, she can help her unborn child move to a better world. Her prayers, in LaFleur's words, will "ritually facilitate the progress of the mizuko to a place far better than either a family that does not want it or the 'limbo of infants' to which Japanese Buddhist cosmology would otherwise have consigned him."<sup>9</sup>

Second, the mother can try to move on herself. As Smith had earlier put it, a "grief not encountered is a grief denied ...."<sup>10</sup> In grieving for the baby that (by her choice) was not to be, she can bring the event to closure within her own mind. Psychologically, she can turn to her own future, and for the future of any other family members she might have.

In Marketing the Menacing Fetus in Japan, Helen Hardacre takes a sharply different approach.<sup>11</sup> Styling her project self-consciously "feminist," Hardacre repeatedly describes the ritual as both "fetocentric" and "misogynistic."<sup>12</sup> It was and is, she declares, invented and

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<sup>4</sup> Id., at 9

<sup>5</sup> Id., at 9

<sup>6</sup> William R. LaFleur, *Liquid Life: Abortion and Buddhism in Japan* (Princeton: Princeton University Press, 1992); see also William R. LaFleur, *Contestation and Consensus: The Morality of Abortion in Japan*, 40 *Philosophy East & West*. 529 (1990); William R. LaFleur, *Silences and Censures: Abortion, History, and Buddhism in Japan: A Rejoinder to George Tanabe*, 22 *Japanese J. Religious Stud.* 185 (1995); William R. LaFleur, 1999. *Abortion, Ambiguity, and Exorcism*, 67 *J. Am. Acad. Religion* 797 (1999); Eiki Hoshino & Dosho Takeda, *Indebtedness and Comfort: The Undercurrents of Mizuko Kuyo in Contemporary Japan*, 14 *Japanese J. Religious Stud.* 305 (1987).

<sup>7</sup> E.g., Fabian Drixler, *Infanticide and Fertility in Eastern Japan: Discourse and Demography, 1660-1880* (Cambridge: Harvard University Press, 2008).

<sup>8</sup> LaFleur, *supra* note (1990).

<sup>9</sup> LaFleur, *supra* note (1992), at 27 (orig. in ital.).

<sup>10</sup> Smith, *supra* note, at 12.

<sup>11</sup> Helen Hardacre, *Marketing the Menacing Fetus in Japan* Berkeley: University of California Press, 1997).

<sup>12</sup> E.g., Hardacre, *supra* note, at 80.

promoted by "entrepreneurial religionists" (a phrase she considers derogatory). It is a "fad," fanned by a "media blitz," but one which in 1997 was already "dying out."<sup>13</sup>

Hardacre's mizuko kuyo ritual did not develop in response to anything the women themselves might have experienced. It did not arise, as she put it, "as an unmediated expression of popular sentiment about abortion."<sup>14</sup> Instead, the temples had generated demand for the ritual through "an intense media advertising campaign" that stressed the harm that vengeful spirits of the aborted fetuses could wreak. Mizuko kuyo "was advanced as the 'answer' to a 'problem,'" she writes, "created mostly by those purveying the rites in question."<sup>15</sup>

Scholars immediately questioned the causal connection between Hardacre's "media blitz" and the mizuko ritual. The "blitz" about vengeful fetal spirits did not begin until the 1970s, but by Hardacre's own evidence the temples were already offering the ritual before 1965.<sup>16</sup> More basically, that suppliers might advertise a service or that journalists might run a "media blitz" about a service says nothing about the level of underlying demand. George Tanabe thought the tie between mizuko kuyo and vengeful ghosts "unclear (or clearly tenuous)" and the effectiveness of any media blitz "questionable."<sup>17</sup> Ian Reader declared that Hardacre supported her causal claim "with surprisingly little evidence."<sup>18</sup>

Other scholars thought Hardacre gave Japanese women far too little credit. Writing about mizuko kuyo in the Journal of the Feminist Study of Religion in 1995, Elizabeth Harrison had already stressed the need to account for women's "agency" in explaining the ritual. To be sure, she wrote, "Japanese feminists frequently view the practice as an example of the male religious patriarchy's oppression of women." But this is unfair to the women themselves, she continued. "[M]any of them," she continued, "are actively choosing for themselves to do mizuko kuyo, because it helps them make sense of and deal with disturbing and unresolved issues in their lives."<sup>19</sup>

Meredith Underwood was more emphatic still. Hardacre has lost sight, she wrote, of "not women but women's agency." Japanese women "are not religious 'dupes' nor are they religious 'dopes.'" To understand the ritual, scholars must drop the "assumption that the women who perform mizuko kuyo are media patsies, religious pawns, or both."<sup>20</sup>

## B. Abortion in 2020:

Through an initial statute in 1948 and its amendment in 1952, the Japanese government legalized abortion when the "health of the mother" was at stake. The potential health threats

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<sup>13</sup> E.g., *id.*, at 92, 251, xxi.

<sup>14</sup> *Id.*, at 251.

<sup>15</sup> *Id.*, at 251.

<sup>16</sup> *Id.*, at 94 tab. 5.

<sup>17</sup> George J. Tanabe, Jr., Review, 25 *Japanese J. Religious Stud.* 377, 378 (1998).

<sup>18</sup> Ian Reader, Review, 57 *Asian Folklore Stud.* 152, 154 (1998).

<sup>19</sup> Elizabeth G. Harrison, Women's Responses to Child Loss in Japan: The Case of Mizuko Kuyo, 11 *J. Feminist Stud. Religion* 67, 74, 76 (1995).

<sup>20</sup> Meredith Underwood, Strategies of Survival: Women, Abortion, and Popular Religion in Contemporary Religion, 67 *J. Am. Acad. Religion* 739, 740 (1999).

included "economic" threats. Effectively, the government had made abortion available upon demand.<sup>21</sup>

Almost invariably, commentators have described the resulting abortion rate in Japan as high. It was: at its peak in 1957, the ratio of abortions to live births reached 71.6 percent (Table 1). Yet from that high, the rate has steadily declined. By 1975, it had fallen to 35.3 percent, by 1995 to 28.9 percent, and by 2017 to 17.4 percent. Prior to the 1973 Roe v. Wade decision, abortion legality in the U.S. had of course varied by state. During the years after Roe, however, the ratio of abortions to live births in Japan and in the U.S. have tracked each other almost perfectly. In 1980, the ratio stood at 37.9 in Japan and 35.9 in the U.S. By 2015, it had fallen to 17.5 in Japan and 18.8 in the U.S.

[Insert Table 1 about here.]

Bear in mind three observations about these statistics. First, the official numbers under-report the actual incidence of abortion. Although Japan maintains a national health insurance system, women sometimes avoid the resulting medical record by paying cash. When they do, gynecologists sometimes evade taxes by keeping the procedure off their own books as well.<sup>22</sup> Unfortunately, what fraction of abortions goes unreported, and how that fraction may have changed over time remains unclear.

Second, although older women have a higher proportion of abortions in Japan than in the U.S., the phenomenon reflects in part the skewed Japanese population pyramid. In the U.S. (2016), 10 percent of the abortions involved women 19 and under, 30 percent involved women 20-24, and 29 percent involved women 25-29. In Japan (2017), 8.9 percent involved women 19 and under, 23.9 percent involved women 20-24, and 19.6 percent involved women 25-29. Japanese women aged 30 and higher had a larger fraction of the abortions relative to women under 30, in other words, than U.S. women had. Note, however, that a larger fraction of women are over age 30 in Japan than in the U.S. In the U.S. (2016), 22.0 million were age 20-29, and 21.1 million were 30-39. In Japan (2015), 6.1 million women were 20-29, and 7.7 million were 30-39.<sup>23</sup>

Third, during the first two decades after the war, Japanese men and women relied heavily on the rhythm method for birth control, and secondarily on condoms. They no longer rely on the rhythm method, but do still use condoms.<sup>24</sup> Yoshida, et al., for example, find that 83 percent of

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<sup>21</sup> Yusei hogo ho [Eugenics Protection Act], Law No. 156 of 1948, Sec. 3(d)(abortion allowed when mother's life in danger); Law No. 141 of 1952 (abortion allowed for "health of the mother" for "physical or economic reasons"); see generally Jason Morgan, Kikuta Noboru and Adoption Law in Japan, 102 *Reitaku daigaku kiyo* 35 (2019).

<sup>22</sup> Ikki Takada, Shinkoku more kingaku [Unreported Amounts], *Gentosha Gold Online*, Apr. 18, 2020; Kokuzeicho, *Saikin 5 nenkan no ikken atari no jigyo shotoku ... [Business Income per Case in Last 5 Years ...]*, as of July 2020, available at: <https://www.nta.go.jp/about/organization/tokyo/release/h20/chosa/04.htm>.

<sup>23</sup> Abortion numbers from Kosei rodo sho, Heisei 29 nendo eisei gyosei hokokurei no gaikyo [Summary of Examples of Public Health Reports for 2017 (2018), available at [https://www.mhlw.go.jp/toukei/saikin/hw/eisei\\_houkoku/17/dl/gaikyo.pdf](https://www.mhlw.go.jp/toukei/saikin/hw/eisei_houkoku/17/dl/gaikyo.pdf); Tara C. Jatlaoui, et al., *Abortion Surveillance -- United States, 2019*, 68(11) *Surveillance Summaries* 1 (2019).

<sup>24</sup> The claim frequently made by western scholars that Japanese women have lacked access to legal contraceptive means is a puzzle. For examples of these claims, see R.J. Zwi Werblowsky, *Mizuko Kuyo: Notulae on the Most Important New Religion of Japan*, 18 *Japanese J. Religious Stud.* 295, 310 (1991); Smith, *supra* note, at 6, 8; Underwood, *supra* note, at 740; Hardacre, *supra* note, at 250. These statements are from the 1990s, when women did

the women surveyed (married and unmarried) rely on condoms.<sup>25</sup> Japanese women have had access to the oral contraceptive pill since 1999, but only 3 percent use it. They have had access to the IUD even longer, but they avoid that too.<sup>26</sup>

### C. Mizuko Kuyo in 2020:

1. At the specialist temples. -- Journalists and scholars in the 1990s tended to pay disproportionate attention to several new temples dedicated specifically to mizuko kuyo. In the Tokyo area, for example, they focused on the Jizoji at Mt. Shiunzan.<sup>27</sup> Hostile scholars stressed the fact that it had been founded in 1971 by one Tetsuma Hashimoto, a man with prominent conservative political connections.

Closer to Nagoya in the south, journalists visited the Dai-Kannon temple. One Yujiro Takekawa had built it in 1982. He had nestled it on the side of a mountain, and constructed for it a 33-meter golden image of the bodhisattva Kannon.<sup>28</sup> Quite how Takekawa had made his fortune remains a mystery, but he does seem to have lacked Hashimoto's conservative political ties.

2. At the generalist temples. -- For ordinary Japanese women troubled by their abortion, the few prominent institutions specializing in mizuko kuyo matter less than the neighborhood temple. Writing in 1997, Hardacre estimated that "mizuko kuyo is practiced at roughly 40 to 45 percent of the religious institutions."<sup>29</sup> Plausibly, observers suggest that even temples that do not advertise the ritual may sometimes perform it upon request.

To canvass the market, I take the temples in Hyogo prefecture. Located next to metropolitan Osaka, Hyogo stretches from the Kobe metropolis (population 1.5 million) on the Seto Inland Sea, to prime rice paddy fields inland, to the isolated villages and hot springs resorts along the coast of the Sea of Japan.

In the first column on Table 2, I give the number of Hyogo temples by denomination. Among the 3,743 total, Jodo shin temples are the most numerous by far (1148), followed by Shingon (798). Jodo, Soto, and Rinzai each have 300+ temples, and Tendai and Nichiren have the fewest.

[Insert Table 2 about here.]

Note that the Tendai and Shingon denominations developed out of the Mahayana Buddhism that arrived from China in the 8th and 9th centuries. The Jodo and Jodo shin denominations represent more indigenously Japanese variations dating from the 12th and 13th century, and focus on a faith in the mercy of the Amida Buddha in leading a believer to the "Pure Land." Zen (Soto and Rinzai are both Zen denominations) travelled from China to Japan in the

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lack access to the oral contraceptive pill, but even then they had access to other legal contraceptives. For 20 years now, they have had access to the pill -- and do not use it anyway.

<sup>25</sup> Honami Yoshida, et al., Contraception in Japan: Current Trends, 93 *Contraception* 475 (2016).

<sup>26</sup> Aya Goto, et al., Oral Contraceptives and Women's Health in Japan, 282 *JAMA* 2173 (1999).

<sup>27</sup> See temple website, at <http://www.shiunzan-jizouji.com/index.html>.

<sup>28</sup> See temple website, at <https://www.daikannon.or.jp>.

<sup>29</sup> Hardacre, *supra* note, at 92.

13th century. The Nichiren faith developed as an indigenous Japanese denomination (also during the 13th century), and focuses on the Lotus sutra.

The denominational distribution in Hyogo roughly tracks national patterns. Oda details the national distribution as of 1959.<sup>30</sup> He identifies 41.8 percent of the temples in Japan as Jodo or Jodo shin, 29.0 percent as Soto or Rinzaï, 21.2 percent as Tendai or Shingon, and 8.0 percent Nichiren. The comparable figures for Hyogo from Table 2 are 40.6 percent, 20.0 percent, 25.7 percent, and 4.4 percent.

In the second column of Table 2, I give the number of Hyogo temples identified on the internet as offering mizuko kuyo services. Most of these temples advertise the ritual on their own website; a few are identified through other sources like websites on women's services. The Hyogo temples identifiable on the internet as offering mizuko kuyo come to 70 temples -- 1.9 percent of all temples, or 2.7 percent if one excludes the Jodo shin temples that refuse the ritual by denominational policy (see below).

Obviously, Table 2 does not mean that only 2 percent of Hyogo temples offer mizuko kuyo; it means that only 2 percent of Hyogo temples can be identified on the internet as temples providing the service. The vast majority of temples are small, chronically underfunded operations with no presence on the internet at all. Of the 3,743 Kobe temples, only 151 have a website. Of those with a website, 34 (22.5 percent) advertise mizuko kuyo services.

Note that the Jodo shin denomination has taken a public stand against mizuko kuyo. As one temple (Joshoji, in Kobe) explains it:<sup>31</sup>

In the Jodo shin denomination, there is no special ceremony for commemorating a mizuko. According to Buddhist teachings, a "life" is born the moment the soul enters the mother's womb. Although we call it a "mizuko," in terms of reverence for life, its birth is no different from the birth of any other form of life. It is a soul that did not enter our world, but one which we must recognize as a full human being. ...

There may have been a variety of causes and reasons for what happened, but it is a fact that a precious life was lost. It is crucial that we recognize this fact directly. Although no Jodo shin temples publicly advertise mizuko kuyo services in Hyogo, several writers do indicate that Jodo shin priests sometimes perform the ritual upon request.<sup>32</sup>

3. As the people involved describe it. -- Some temples perform mizuko kuyo regularly, and others perform it when requested -- but perform it they do. The 1970s "media blitz" over the ritual has completely disappeared. The tales of the vengeful ghosts of the aborted children have almost disappeared. What remains is a simple story of death, suffering, and sorrow. It is a story of the remorseful women and the priests who counsel them, largely as Smith and LaFleur told it nearly thirty years ago.

The Enmanji is a suburban Osaka (Shingon) temple dating to the 8th century. On its website, its priests answer some of the questions that they receive.<sup>33</sup> "Will my mizuko haunt me?" asked one parent (probably a mother). "Mizuko do not haunt," answered the priest:

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<sup>30</sup> Masayasu Oda, *Nihon ni okeru Bukkyo shoshuha no bunpu* [The Distribution of Buddhist Denominations in Japan], 39 *Komazawa chiri* 37, 41 (2003).

<sup>31</sup> See temple website at <https://www.jyoshoji.com/buddhist/>.

<sup>32</sup> Werblowsky, *supra* note at 308; LaFleur, *supra* note (1995) at 187 n.1.

<sup>33</sup> *Tengoku no akachan Q & A* [Baby in Heaven, Q & A]. Available at: <https://www.enmanji.com/mizukoga2.htm>.

"We still get questions like this at the Joko enmanji. But no matter where you look in the Buddhist sutras, you will find nothing about this. What is more, a mizuko's heart is clear and pure. With his limitlessly beautiful heart, how could a mizuko ever feel jealous or hold a grudge?"

Another asked what she could do for the child. The priest wrote:

Guided directly to paradise, your child left no trace on earth. Only his mother and father even know of his existence. Only they can express deep love for him. Even for one led to paradise, however, to think that no one loves him is heart-breaking. The best gift you can give your child in paradise is for you as a parent never to forget him."

One mother asks, "can someone like me -- the worst kind of human -- even be forgiven?" The priest replies that many mothers lament, "I did the worst thing." "I have no right to be happy," they tell him. But the priest simply reassures: "Just as you wish for the happiness of your parents, your child is wishing for your happiness from the bottom of his heart." "How then should I pray to our baby in paradise?" asks a mother. "Just pray your honest feelings," answers the priest:

"Please be happy." "Your mommy and daddy will never forget you." "Thank you for watching over us." ... Maybe all you can do at first is to cry. Maybe you can't communicate how you feel. Maybe all you can say is "I'm sorry." ... But at Enmanji, we don't encourage you to pray "I'm sorry" forever. Once your heart has begun to clear, try to communicate your love and thankfulness.

Writing on "The Lotus Leaf" Buddhist counseling website, another priest talked of the requests he receives for mizuko kuyo:<sup>34</sup>

Once in a while, someone asks me to do mizuko kuyo. Sometimes the man comes along, but usually the woman comes by herself. ... The man ought to be there too, and when he's not it makes me angry.

I read the sutras [and hold the mizuko kuyo ceremony,] but here's what I tell the woman. "Let's pledge to the Buddha and to your baby that you'll never do this again." "Get married, and with a good partner give birth. Raise those babies to be fine children. That's the penance you need to perform. That's your act of remembrance." ...

When you'd like to pray to the child you've lost, please just hold your hands together, and bow. Do it when you walk past your nearby temple or jizo or kannon statue. The denomination doesn't matter. Don't worry about that. Your lost child will know that you held your hands together.

## II. The Contracting Problem

### A. The Revenue Constraint:

The one point on which nearly all writers seem to agree is the venality of the temples that promote the mizuko kuyo ceremony. Hardacre wrote a book-length attack on the mercenary priests. Underwood described the "commercial exploitation" as "scandalous."<sup>35</sup> Werblowsky thought the temples "making fortunes out of" mizuko kuyo gave "Buddhism a bad name."<sup>36</sup>

There is something of a tilting-at-windmills quality to these tirades. A temple that cannot cover its costs is a temple that will go out of business. Those temples that survive are those that find ways to pay their expenses. And necessarily, those expenses will include compensation to

<sup>34</sup> Mizuko kuyo ni tsuite [Regarding Mizuko Kuyo], Hasunoha. Available at <https://hasunoha.jp/questions/32426>.

<sup>35</sup> Underwood, *supra* note.

<sup>36</sup> Werblowsky, *supra* note, at 326, 306.

the priest, equal roughly to what he would have earned in his next-best career. A priest may have refused to provide mizuko kuyo out of a sense of theological propriety. But if he cannot pay his bills, his temple will disappear.

The temples that survive are those that do find a way to pay their expenses. The famous institutions that Westerners visit as tourists represent a tiny fraction of the industry. The vast majority of Japanese temples have nothing of aesthetic interest, and survive as best they can. Some may have survived by marketing mizuko kuyo. Others may have turned to different sources of income. But to the extent that mizuko kuyo helps temples cover their costs, those temples with the practice will more likely survive than those without it.

Temples in Japan are family firms. For the most part, priests hold an effective (albeit not formal) equity interest in their temples. Routinely, they pass on their temples to their sons or daughters.<sup>37</sup> Nominally, they run the temple as a non-profit religious corporation with a governing board. Largely, however, they set their own pay, determine what size parsonage to build (tax-free) for themselves and their families, and decide when to convey the temple to their children.

To the extent that priests hold this equity interest, they have every incentive to enhance the value of the temple's revenue stream. Make the right investments in the temple, and the facilities will generate revenue. During their own lifetime, they can capture that revenue for themselves. Thereafter, their children will capture it. Knowing that any investments in the temple as a going concern will accrue to their children after their retirement, the priests have an interest comparable to that of a sole shareholder: maximize the present value of the net future cash-flow.

## B. What a Temple Offers:

1. The liminal. -- Like churches and synagogues in the West, indeed like most mainstream religious faiths everywhere, Japanese temples guide their members through the most stressful transitions in their lives. They provide the "explanations" by which people make sense of their world, as sociologist Rodney Stark put it, and a set of rituals by which to reaffirm those explanations.<sup>38</sup> In virtually all societies, the aspect of life for which people most desperately need an explanation is death. In the words of sociologist Peter Berger, death is the quintessential event in which "the fundamental order in terms of which the individual can 'make sense' of his life and recognize his own identity will be in process of disintegration."<sup>39</sup>

"Liminal," sociologist Victor Turner called these transitional points in life.<sup>40</sup> Of all the liminal events, death is among the most fundamental everywhere. In Japan, it is the crisis in which temples have chosen to specialize: Shinto shrines handle births and weddings, while Buddhist temples handle funerals. When a person witnesses the death of those to whom he is closest, writes Berger, he is forced "to question the ad hoc cognitive and normative operating procedures of his

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<sup>37</sup> LaFleur, *supra* note (1992), at 81, notes that monks during the Tokugawa period were increasingly marrying and conveying their temples to their sons.

<sup>38</sup> Rodney Stark & Roger Finke, *Acts of Faith: Explaining the Human Side of Religion* (Berkeley: University of California Press, 2000); Rodney Stark & William Sims Bainbridge, *A Theory of Religion* (New Brunswick: Rutgers University Press, 1987) (1996 reprint).

<sup>39</sup> Peter L. Berger, *The Sacred Canopy: Elements of a Sociological Theory of Religion* 22 (New York: Doubleday, 1967).

<sup>40</sup> Victor Turner, *Betwixt and Between The Liminal Period in Rites of Passage* (1967), reproduced in *Betwixt & Between: Patterns of Masculine and Feminine Initiation*, ed. Louise Carus Mahdi, Steven Foster & Meredith Little (La Salle, IL: Open Court, 1967).

'normal' life in society."<sup>41</sup> Fundamentally, to quote Berger again, death -- and "liminal" events more generally -- "reveal the innate precariousness of all social worlds."<sup>42</sup>

The death of a living family member is one of the most profoundly disruptive liminal events, but as philosopher Alison Reiheld noted, miscarriage is another. For the woman involved, a miscarriage is "a much closer experience with death than our culture normally encourages." A woman "who has miscarried is in the archetypal situation of 'no-longer' and 'not yet,' for she will never parent the child who might have been ...."<sup>43</sup> Abortion obviously carries with it all that and more. Ultimately, the "close experience with death" in an abortion is one which the woman herself (for all the varied reasons that we raise in our discussions of the practice) has willed.

2. Church and sect. -- Japanese temples face the financial constraints that they do because they are "churches" rather than "sects," "low-tension" groups rather than "high-." The distinction dates from Max Weber and Ernst Troelsch. Troelsch called a religious group a church if it "accepts the secular order"; he called it a sect if it refuses to accept that order but demands that its members live by a different moral code instead.<sup>44</sup> Within mid-20th century Protestantism, the Congregationalists and Anglicans represented quintessential churches, and the Seventh-Day Adventists and Jehovah's Witnesses sects. Within early 21st century Judaism, the Reform synagogues constitute churches, and the Orthodox sects.

More recently, sociologist Rodney Stark distinguishes between "low-" and "high-tension" religious groups.<sup>45</sup> Consider Stark's terms a clarification of the Weber-Troelsch dichotomy. Religious groups exist on "an axis of tension between the group and its sociocultural environment," explains Stark. That tension, in turn, "refers to the degree of distinctiveness, separation, and antagonism between a religious group and the 'outside' world."

Japanese temples have long been churches, organizations in very low tension with the secular world. The temples accept the world within which they live. They do not encourage their members to live apart from the world (like the Essenes or the Amish). Neither do they encourage their members to destroy it (like the Aum or the Taliban). Instead, they minister to their members as they live within the world in which they find themselves. Religious entrepreneurs in Japan had created high-tension revitalization movements within the Buddhist tradition during the 12th- and 13-th centuries. But by the 17th century, even those movements that had earlier placed their adherents in high-tension with their surrounding culture had turned mainstream.

Groups that demand much from their adherents receive much. Groups that exist in states of high-tension with the world draw only (or primarily) people who bring relatively high levels of commitment. When entry costs are high, writes Stark:<sup>46</sup>

those with only low levels of commitment, are excluded and thereby prevented from exploiting the group. Hence, high costs make membership sufficiently unattractive so to chase away the apathetic, and in so doing make the rewards of belonging far more intense.

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<sup>41</sup> Berger, *supra* note, at 24.

<sup>42</sup> *Id.*, at 24.

<sup>43</sup> Alison Reiheld, "The Event That Was Nothing": Miscarriage as a Liminal Event, 46 *J. Soc. Phil.* 9, 11-12 (2015).

<sup>44</sup> Quoted in Stark & Finke, *supra* note, at 222, 142.

<sup>45</sup> *Id.*, at 143

<sup>46</sup> *Id.*, at 148.

High-tension religious groups face less free-riding for two reasons. On the one hand, they screen out less committed members by imposing a higher cost of entry, and monitoring more closely the members who do join. As Laurence Iannacone put it:<sup>47</sup>

[A]pparently gratuitous sacrifices can function to mitigate a religion's free-rider problems by screening out half-hearted members and inducing higher levels of participation among those who remain.

Concomitantly, the high-tension groups increase the level of in-church commitment by increasing the cost of social ties outside the church. Again, Iannacone writes:<sup>48</sup>

Increasing the price of an activity reduces the demand for it, but increases the demand for its substitutes, that is, for competing activities. Hence, a religious group can indirectly increase its members' levels of participation by prohibiting or otherwise increasing the cost of alternative activities.

By contrast, groups that demand little from their adherents receive little. For all the reason that high-tension groups minimize free-rider problems, low-tension groups -- think Anglican, Congregationalist, or Reform Jewish in the U.S. -- find the problems crippling. A group that requires its members to shun a wide variety of common practices will attract and hold only those who place a value on church membership high enough to offset that cost. A group that requires none of that abstinence will include adherents who value the church much less. The lower level of commitment and monitoring, in turn, will lead to wide-spread free-riding. The declining memberships and chronic budgetary shortfalls of the modern Protestant mainline denominations follow.

### C. Funding Its Services:

The temple priest can minister to his parishioners through a liminal event like death because he is there. In the traditional village, he had always been there. He grew up in the village, he succeeded to his father's post, he knew the parish. When a father in the village died, he (usually) knew the (rough outlines of the) relationships that the father's children had with him and with each other. He was there when the villagers needed him. Ideally, he could counsel, and he could provide the rituals that would help the parishioners negotiate their way through the transition.

In the traditional village, the temple priest effectively served on retainer. He did not just run rituals when asked. He stood always ready to help. And because he stood ready on an ongoing basis, the straightforward way to compensate him for his service was not to pay a high price for the rituals that he occasionally performed. It was to pay him a regular retainer fee to compensate him for agreeing to stand ready always to help (and give more modest gifts when he did perform a ritual), whenever asked in whatever way necessary.

During the Tokugawa period, the traditional village priest did indeed collect a regular fee. As part of its anti-Christian policy, the Tokugawa government had ordered all citizens to register at their local temple. Those households registered at a given temple were called its "danka." The government did not itself subsidize the temples, and did not order the danka households to subsidize it either. Yet the danka households usually did keep the temple funded.

The danka supported their local temple because they lived within a tightly knit social network, and through that network enforced important obligations on each other. The temples could not have enforced the obligation themselves. They were the quintessential low-tension

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<sup>47</sup> Laurence R. Iannacone, Introduction to the Economics of Religion, 36 J. Econ. Lit. 1465, 1483 (1998).

<sup>48</sup> Laurence R. Iannacone, Why Strict Churches Are Strong, 99 Am. J. Soc. 1180, 1187 (1994).

religious group, and had no way themselves to enforce any moral norms about generosity. Instead, the temples depended on the dense networks of social capital within the village itself.

Wholly apart from the temple, in other words, village members enforced on each other the obligation to support community institutions. Those institutions might include a road or a bridge. They could also include a temple. One should not exaggerate pre-modern religious devotion. Temple histories occasionally describe the way it sometimes took a village decades to rebuild a temple after a fire. But to the extent that villagers did support a temple, they supported it because they lived within a tightly knit village structure through which they enforced a wide variety of obligations on each other.

### III. The Modern Dilemma

#### A. Introduction:

By the closing decades of the 19th century, Japanese were moving in massive numbers from the towns and villages to the urban centers. There, they found what were for them well-paying jobs in the new factories and commercial establishments. Through the early years of the 20th century, they continued to migrate.

Consider Hyogo prefecture. In 1920, only 28.8 percent of the residents of the prefectural capital of Kobe had been born in the city. Only 35.2 percent of the Himeji city residents had been born there, and only 35.4 percent of Amagasaki city residents. Over the next decade, the national population increased 15.2 percent to 64.5 million. The Hyogo prefectural population increased roughly in tandem: 15.0 percent, to 2.6 million. The urban centers, however, grew much faster: Kobe grew 22.2 percent (to 787,616), Himeji grew 20.0 percent (to 62,171), and Amagasaki grew 30.2 percent (to 50,064). In that single decade, the new city of Nishinomiya grew an astonishing 38.5 percent (to 39,360).<sup>49</sup>

As people moved, the temples lost their ability to fund their own activities. So long as people remained largely embedded within tightly structured villages, the temples had been able to use the social network to enforce the contributions they needed. As people began to move from the countryside to the city, the village temples retained their structure -- but lost people. The cities gained the people -- but without a tight social network through which to enforce temple contributions.

#### B. Timing the Crisis:

Misreading his statistics, religion scholar Ian Reader characterizes the religious decline in Japan as a largely post-war phenomenon. He writes:<sup>50</sup>

In 1970, there were 96,000 Buddhist temples in Japan according to government statistics (Akimoto 2008). The Shukyo Nenkan of 2007 gives a figure of 75,866 registered temples, a decline of over 20,000 temples in 37 years -- with approximately 20,000 of these lacking a resident priest (Murai 2010,46).

Reader further stresses the claim that "many [temples] do not have priests."<sup>51</sup> He continues:

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<sup>49</sup> Naikaku tokei kyoku, Kokusei chosa hokoku [Report on Vital Statistics] (Tokyo: Tokyo tokei kyokai, 1920)(Prefectural supplement v. 5); Naikaku tokkei kyoku, Kokusei chosa hokoku [Report on Vital Statistics] (Tokyo: Tokyo tokei kyokai, 1930) (Supplement v. 5).

<sup>50</sup> Ian Reader, Buddhism in Crisis? Institutional Decline in Modern Japan, 28 *Buddhist Stud. Rev.* 233, 242 (2011).

<sup>51</sup> *Id.*, at 242.

While not entirely a new problem (in 1965 the Soto sect reported that 23.3 % of its temples had no successor), it has become increasingly acute in recent years. By 2005 35.4 % of Soto temples had no successor priest ....

In fact, Reader overstates the post-war decline, and misses the extent to which migration had already devastated Buddhist temples by 1940. People had already begun to migrate from the countryside to the cities in the late 19th century. As discussed immediately above, by the early decades of the 20th they had firmly entrenched themselves in the metropolitan areas.

Contrary to the Reader's first observation above, from 1970 to 2007 the number of temples in Japan rose. Unfortunately, Reader mixed data from several different sources. Bunka cho (2015 tab. 1-6) gives the full set of figures.<sup>52</sup> In 1970 there were 96,026 (Reader's number) total Buddhist religious organizations (shukyo dantai). By 2007 the number of such organizations had fallen to 85,897. But these are the numbers for religious organizations -- not actual temples.

Reader observes that in 2007 there were 75,866 temples. In fact, however, this is the figure for 2006 rather than 2007, and is the number for those temples operated by incorporated religious organizations (shukyo hojin). In 1970 there had been only 74,866 such temples. Probably the most meaningful number concerns the total Buddhist temples operated by both incorporated and unincorporated religious entities. In 1970, there were 75,922 such temples; in 2007 there were 77,286 such temples.

The priest shortage that Reader presents as postwar already plagued the temples before the war. In 1910, there were 71,770 temples in Japan (note how close this is to the figure at the end of the century). For these temples, there were 52,721 resident priests -- leaving 26.5 percent without a resident priest.<sup>53</sup> Reader discusses the dire situation at the Soto temples in 2005. In 1910, there were 14,211 Soto temples, and they had 10,228 resident priests. The situation in 2005 was nothing new. Already in 1910, 38.9 percent of the Soto temples had no resident priest.

### C. Secularization?

Scholars can try to attribute the financial problems at the temples to "secularization": no one contributes to the temples, because no believes the Buddhist faith anymore. To demonstrate that secularization, they often turn to the opinion surveys that newspapers and others have conducted over the years.<sup>54</sup> In these surveys Japanese respondents routinely describe themselves as mostly irreligious. They identify with both Buddhism and Shintoism, they take the theology of neither seriously, and they attend services of neither regularly.

In fact, however, very few Japanese attend regular services at Buddhist temples or Shinto shrines for a simple reason: very few temples or shrines offer any regular services at all. Neither holds weekly meetings in the way that Christian, Jewish, or Islamic groups do. Japanese identify with both Buddhism and Shintoism because the two religious specialize in different life events. Buddhism focuses on death -- and hence in funerals. Shintoism focuses on new life -- and hence in weddings and milestones for children as they grow.

Japanese do visit temples and shrines. In 2009 (the last year the police released the number), 99.4 million people (out of a total population of 128 million) visited a shrine or temple between

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<sup>52</sup> Bunka cho, Shukyo kanren tokei ni kansuru shiryoshu [Materials Relating to Religious Statistics] tab. 1-6 (Tokyo: Bunka cho, 2015).

<sup>53</sup> Naikaku tokeikyoku, ed., Nihon teikoku tokei nenkan [Japanese Statistical Annual] 435 tab. 406 (Tokyo: Tokyo tokei kyokai, 1920).

<sup>54</sup> E.g., Reader, *supra* note (2011).

January 1 and 3.<sup>55</sup> Japanese also visit temples to pray in times of stress -- and not just after miscarriages or abortions. According to a survey cited by Alan Miller:<sup>56</sup>

69 percent of respondents claim they regularly visit shrines and temples during holidays, 54 percent say they visit shrines and temples to offer prayers during difficult times, 63 percent keep good luck charms, 59 percent they believe a spirit dwells in such things as mountains, rivers and trees ..., and 58 percent believe that after death a person's spirit remains with his family.

#### D. Geographical Mismatch:

At root, Japanese temples face a crisis borne of geographical mismatch: the temples are no longer where the people are. Temples do not readily move. Most are where they are because that is where they were in 1868. People do move. And since the late 19th century people have been moving in massive numbers. The villages that were so central to Tokugawa society have an excess of temples. The cities have a dearth.

Table 3 illustrates this geographical mismatch with data from Hyogo. The table gives the 5 municipalities with the greatest number of people per temple, and the 5 with the smallest. The five under-served areas are all part of the massive metropolitan area at the south of the prefecture along the Seto Inland Sea. Indeed, Nishinomiya, Kawanishi, and Itami are effectively suburbs to the giant city of Osaka to the east (population 19.2 million). On average, each temple in these areas serves at least 3000 people (Kobe, has a population per temple of 1503.6).

[Insert Table 3 about here.]

The five over-served areas are all in the mountainous area between the two coasts. People once lived there. A few still do. But far too few live there to maintain the temples that remain. Conventional wisdom has it that a temple needs 300 supporting (danka) households to survive. All five over-served areas have fewer than 400 people per temple. Even if everyone supported his local temple, there would be barely 100 households a piece.

#### E. Entrepreneurial Initiative:

Given the financial crisis, Table 4 asks which temples have taken the initiative to raise funds. More specifically, it asks which temples advertise their services on the internet. Overwhelmingly, they are the temples in the underserved metropolitan areas. These are the cities with large numbers of unattached potential supporters. The temples that choose to advertise on the web are the temples in these areas.

[Insert Table 4 about here.]

Of the 10 municipalities where the temples are most likely to maintain a web site, seven are along the metropolitan coastal area. Only Fukazaki, Shiso, and Sanda are farther inland. Eight

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<sup>55</sup> 2018 nen no hatsumode ninzu rankingu [Ranking of New Year's Visits in 2018], Manegy, Dec. 41, 2018, available at: <https://www.manegy.com/news/detail/793>; Hatsumode sanpai shasu rankingu [Ranking of New Year's Visitors], Memorva, Jan. 14, 2009, available at: [https://memorva.jp/ranking/japan/hatsumoude\\_2009.php](https://memorva.jp/ranking/japan/hatsumoude_2009.php).

<sup>56</sup> Alan S. Miller, Why Japanese Religions Look Different: The Social Role of Religious Organizations in Japan, 39 Rev. Religious Res. 360, 363.

municipalities had no temples with websites, and another eight had only one temple with a website. Kobe (population 1.54 million with 1024 temples) had 24 temples with web sites; Himeji (population 536,000 and 378 temples) had 11 temples with websites.

F. Temples Offering Mizuko Kuyo:

Table 5 explores which temples publicly offer mizuko kuyo ceremonies. This is not the total number of temples that offer the service -- or even close. This is the number of temples for which one can confirm the provision of the service on the internet. Obviously, large and famous temples are more likely to appear on the net. So are temples that market the service aggressively.

[Insert Table 5 about here.]

Of the 41 municipalities in modern Hyogo prefecture, 30 have at least one temple whose provision of mizuko kuyo can be confirmed on the internet. The metropolitan centers of Kobe, Himeji and Amagasaki all have multiple such temples. Of the remaining municipalities, six have at least two such temples, 18 have at least 1, and 11 have no such temples. Of the municipalities with no such temple, the largest is Takasago. Note, however, that 28 of the 56 temples in Takasago are Jodo shin temples, and the denomination has taken a public stand against the ritual. The other 10 municipalities without such a temple are all municipalities with less than 41,000 population.

In Table 6, I distinguish the denominational distribution among large and small municipalities. Note that Jodo shin temples are more common among the large cities than among the small -- with obvious implications for mizuko kuyo advertising. The Nichiren and Tendai temples are relatively rare in both sets of cities. Rinzaï Zen temples are more common than Soto Zen temples in the large cities, while Soto temples are more common among the smaller municipalities -- but I know of no reason why that distinction would matter here.

[Insert Table 6 about here.]

IV. The Modern Alternatives

A. Introduction:

Faced with their industry-specific financial crisis, innovative Japanese temples have turned to one or more of the following three options. The first two maintain the historic retainer arrangement. The third switches from a retainer to a fee-for-service model. It is here that mizuko kuyo plays a part.

B. Rebuilding Social Capital:

Some temples self-consciously work to build personal ties and a sense of belonging among their parishioners. Within the urban or suburban settings in which they find themselves, they work to build a network with high levels of social capital. They work to build around themselves, in short, a community.

Take the Hyogo temples with websites. Many of them offer their parishioners a wide range of services that have nothing to do with the Buddhist faith, but have everything to do with social capital. Several of them offer yoga lessons (e.g., Ujiyamadera, in Kobe). Others provide courses in flower-arranging (Shorinji in Tanpa), gourmet cooking classes (Kogenji, in Tanpa), or choral groups (Zenkyoji, in Nishinomiya). The Saishoji in Amagasaki runs a discussion group on social issues (e.g., LGB relations) and specifically promises not to mention Buddhism. Some temples

run nursery schools (Zenkyoji, in Nishinomiya), while others offer summer camps (Honganji branch, in Kobe) or run weekend programs for children (Honganji branch, again), sponsor baseball teams (Myofukuji, in Sasayama), operate children's activity centers (Kohonji, in Kawanishi), or organize boy scout troops (Jofukuji in Kawanishi). At least one held a social for singles to meet (Shokoji, in Kobe). Another (literally) organized bingo games (Rengeji, in Toyooka).

Unfortunately, the temples offer services that parishioners can obtain elsewhere. Given that the temples do not discourage parishioners from participating in social events in the outside world, they do not offer events that the parishioners otherwise lack. Given that they convey a sense of the world largely consistent with that sense outside the temple, they do not offer a place for parishioners to meet others with any temple-specific identity. They offer yoga lessons; so does the YMCA. They offer exhibitions; so does the art museum. They sponsor jazz concerts; so does the local concert hall. Parishioners have little reason to make monthly or annual contributions to the temple to subsidize these services; they have substantial reason to free-ride instead.

### C. Membership Structure:

1. Introduction. -- Some temples have replaced their danka structure with a membership organization. Some of them straightforwardly terminated the danka system and created the membership organization in its stead. Others retained the danka system, but added the membership structure on top.

Despite the enthusiasm among journalists and business consultants (yes, there is a market for consultants in the Japanese religious services industry) for the temple membership model, very few temples have actually adopted it. Those that have, provide members with several services. A priest might counsel members as needed. He might provide the rituals that guide them through the liminal crises in their lives (though probably not for free). In effect, the temples have replaced the quasi-mandatory donations of uncertain amounts under the danka system with a fixed and mandatory annual fee.

2. The Fukugonji temple. -- The Fukugonji in suburban Nagoya dates from the 14th century.<sup>57</sup> In order to move beyond the danka framework, it has adopted a membership system. It forthrightly looks for men and women who want to study and practice Buddhism. But where the danka system "was bound to a [geographical] region," it hopes that the new framework will let it "cross regional boundaries."

The Fukugonji also hopes to cross denominational boundaries. Although the temple itself is Soto Zen, it envisions the membership as a forum to "discuss 'wisdom for living' -- a wisdom that crosses denominational boundaries and arises from the heart of Buddhist teaching." Toward that end, it invites members to a variety of Buddhist-related lectures and rituals. Although members are free to arrange to have their bones interred at the temple and for memorials to be read in perpetuity, the arrangement is distinct from the membership. For that service, called "eidai kuyo," the temple charges an additional 1 million yen (about \$10,000).

The Fukugonji charges its members 10,000 yen per year -- about \$100. That is far too small an amount to keep any temple solvent -- indeed, it is so small that one wonders what spreadsheets the business consultants could be selling the impoverished temples. Yet few temples charge anything more, and most charge much less.

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<sup>57</sup> See temple website at <http://fukugonji.com>.

3. The Shinryuji temple. -- Some temples with the new membership structure charge no annual dues at all. Perhaps they offer membership as a loss-leader and hope eventually to entice the members to make a substantial gift, though some insist not. Shinryuji, an independent temple in Chiba prefecture, explains on its website that it has replaced its danka system with a membership organization, and writes that it charges no fee for the membership.<sup>58</sup> The temple does report that its membership is growing. But if it is not successfully selling other services to the new members or obtaining donations from them, it may be making up in volume what it loses on each member.

Obviously, these membership structures do nothing to solve the problem at the heart of the danka system: as religious institutions presenting only a very low level of tension with the surrounding community, the temples have nothing distinctive to offer their parishioners. The Fukugonji hopes people will pay 10,000 yen to discuss "wisdom for living" (stripped of any Zen substance). The Shinryuji cannot even hope that much. As noted earlier, parishioners can obtain yoga lessons from a temple, but they can obtain just as attractive a set of lessons from the YMCA. The same dynamic applies to concerts, psychological counseling, and nursery school services. If a temple charges a fee for the service, they will pay it only if the price-quality package is more attractive than at the Y. They have no incentive at all to make an annual danka donation or an annual membership fee of substance to insure that the temple survives another year.

#### D. Fee-for-service contracts:

1. Introduction. -- And so it is that temples have begun to charge explicitly for the most basic services they provide. As sellers of a service in a competitive market (there are tens of thousands of other temples, after all), they advertise their services. They compete on quality, and they compete on price. The most notorious of the fee-for-service arrangements involve mizuko kuyo, but temples market several others.

2. Perpetual commemoration. -- Because of the free-riding that it invites through its low-tension character, the modern temples have little choice but to charge for each service directly at a level that will cover their costs. The most basic of the services for which they now charge directly is the agreement to inter a parishioner's bones and to hold commemoration services (here too called kuyo) in perpetuity (eidai). In the past, one would have had to rely on one's descendants to hold the services. With an eidai kuyo contract, one might worry about the temple's future solvency -- but one need no longer worry about any descendants.

Under the danka system, temples often did not inter the bones of non-parishioners. They did inter the bones of their parishioners, and for that services received "donations." Yet they did not rely exclusively on these amounts. Instead, they received major donations from their regular danka members. With the danka system in collapse, modern temples have nowhere else to turn except the fees for their services. So it is that in the early 21st century, many temples offer eidai kuyo services to anyone willing to pay.

Many temples that claim to offer a "membership structure" simply use the term to describe anyone who bought their eidai kuyo service package. In this regard, consider Myokoji.<sup>59</sup> A Nichiren temple in Niigata city, Myokoji claims to date from the 14th century. After abolishing its danka structure, it turned to a membership organization it calls the Annonbyo. Yet unlike the

<sup>58</sup> See temple website at <http://shinryuji.jp/kaiin>.

<sup>59</sup> Danka seido haishi de shunyu 4 bai [Revenue Quadruples with Abandonment of Danka System], Aera, Aug. 3, 2017; see temple website at <https://myoukouji.or.jp/annon/>.

Fukugonji, the Myokoji is not using the membership structure to create a social network of men and women who want to study Buddhism. Instead, it calls anyone an Annonbyo a member if he has paid 850,000 yen and registered to have his bones interred at the Myokoji and to be commemorated in perpetuity.

One of the best known of the membership systems may be that the Saitama Soto temple named the Kenshoin.<sup>60</sup> Eiju Hashimoto serves as its head abbot, and operates in parallel the Zen'yukai -- a non-denominational study group for priests about temple finance. Hashimoto claims to want to transform the Kenshoin from a temple with a funerary focus to an institution that addresses all aspects of life. He wants it to become a community, a place where people will come not just to study meditation and calligraphy, but to obtain help with such mundane matters a health care and insurance. Where temples like the Fukugonji and Myokoji post exquisitely designed websites with professionally produced photographs, the Kenshoin website looks more like a newspaper want ad section from several decades back. It posts advertisements to a variety of grave yards, to priest-dispatch services, to mizuko kuyo, to memorial services for pets (more on this below).

It is hard to quarrel with creating community, except that it is hard to see how anything Hashimoto has in mind could work. Hashimoto champions the need to put temples on stronger economic footing, but has replaced the temple's danka system with a zero-fee membership structure. What is more, although he operates a Zen temple, the one thing missing from the Kenshoin website is any sense of religious faith. The temple may offer help in finding medical care, but so do many places. It can help a person buy the insurance he needs, but a social service agency is not a community.

To the extent that Hashimoto has anything visibly new to offer, it is a devotion to relentless price cutting. Nowhere does he offer the counseling and ritual that might help a parishioner through the long agonizing nights that can follow a death in the family. Instead, he sells rituals that are cheap. The eidai kuyo that the Fukugonji sold for 1 million yen and the Myokoji for 850,000 yen, the Kenshoin sells for 30,000. Should someone want to inter a parent's bones without bothering to visit the temple, the Kenshoin will send him a cardboard box. Deposit 35,000 yen in the Kenshoin bank account, put the bones in the box, and mail it to the Kenshoin. Hashimoto promises to take care of the rest -- in perpetuity.

3. Other services. -- Mizuko and eidai kuyo are but the most notorious aspects of the shift in temple financing toward a fee-for-service contract model. As a key locus of a community, temples for centuries had stood ready to offer residents the counseling and ritual by which to weather the liminal transitions in life. To fund that steady presence, residents (as danka members) made regular donations to the temple. And to mitigate (as much as possible) the risk of free-riding, they used their tightly knit social network within the community to police the donations.

Without that social network to enforce the danka obligation, modern urban and suburban temples have turned to fee-for-service contracts. They offer mizuko kuyo services to women (and occasional men) who remain troubled by abortions in their past. They offer eidai kuyo contracts to people who either have no children or do not trust their children to remember to say prayers on their behalf.

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<sup>60</sup> Minoru Asayama, Danka haishi to "Nagaya jiin" ["Nagaya Temples," and the Abolition of Danka], Notes, June 21, 2018, available at: <https://note.com/monomono117/>; temple website at <http://www.kenshouin.com>.

Many temples (fewer than the temples offering mizuko kuyo, but still many) offer memorials for pets. They call the service "petto kuyo," and post it prominently on their websites.<sup>61</sup> Some of these temples maintain an on-going relationship with a pet cemetery that will then house the bones. Others allow owners who have contracted for eidai kuyo to place the bones of their pets next to their own. Still others simply offer the commemoration ceremony itself.

Many priests offer counseling for a fee. Some include a price on the web: typically 8,000 to 10,000 yen per hour. Others leave the amount of the fee to the person's discretion. One priest offers "color-light" therapy. One website offers a corporate contract: an employer contracts with the website, and the website then offers the company's employees the right to consult with a priest on demand.

And some priests offer home visits for a fee. Some handle the calls themselves. Others contract with an outplacement-service: troubled people call the service, and the service sends the priest to the home. Callers can specify the denomination, the service insists. The price typically runs around 35,000 yen per visit.

## V. The Temple as a Nexus of Contracts

### A. The Metaphor:

Potentially, this fee-for-service model threatens to turn some temples entirely redundant. Those of us in corporate law & economics typically conceptualize a firm as a bundle (or "nexus") of contracts. Suppose we consider a temple a bundle of contracts as well. Upon request, it provides a priest to counsel parishioners under stress, and it supplies a priest to carry out the rituals that will ease their transition through the painful periods in their lives.<sup>62</sup>

The discussion traces itself primarily to Michael C. Jensen and William H. Meckling.<sup>63</sup> The corporation is the means by which a variety of people interact to produce goods and services that they then sell into a competitive market. Toward that end, they raise funds. They hire labor. They buy supplies. Each of these transactions takes place in a competitive market -- and the corporation is the venue through which the team of people uses the funds, labor, and supplies to produce a good or service to sell. As Frank H. Easterbrook and Daniel R. Fischel put it, the reference to a "nexus of contracts" "is just a shorthand for the complex arrangements of many sorts that those who associate voluntarily in the corporation will work out among themselves."<sup>64</sup>

### B. Dispatched Services:

1. The web-based competitors. -- The bundle-of-contracts temple serves as a dispatch service. Unfortunately, the one-temple-one-priest model is likely not the most cost-effective way to run that dispatch service. And already, a variety of firms compete with temples in this market for Buddhist services. These firms avoid the high overhead involved in a temple building, let their independent-contractor priests specialize in their preferred services, and apparently keep many priests significantly busier than do their home temples.

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<sup>61</sup> Barbara R. Ambros, *Bones of Contention: Animals and Religion in Contemporary Japan* (Honolulu: University of Hawai'i Press, 2012).

<sup>62</sup> "Deconglomeration" may be another way to characterize the transition from temple-based services to web-dispatch-services.

<sup>63</sup> *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, 3 J. Finan. Econ. 305 (1976).

<sup>64</sup> *The Corporate Contract*, 89 Colum. L. Rev. 1416, 1426 (1989).

Take "Kakuyasu."<sup>65</sup> The name means something like "deep discount," and is the name of the website that dispatches priests. It promises "EDLP" -- every-day low prices. Consumers can buy the services of a priest to perform a funeral. They can ask for a "self-service funeral," a "next-day funeral," or a "mizuko funeral." They can ask for commemoration rituals, and can specify whether to have them done at a temple, at home, or at a grave site (separate prices for each). They can contract for a hearse to pick up a body. They can ask for a priest to make a house call. They can ask for abortion-related counseling. They can ask for a posthumous name for a deceased. If they want the bones of the deceased enshrined in a distant temple, Kakuyasu will send them a kit to mail the bones and ashes.

The efficiencies are obvious. The local temple with one priest is something like the apocryphal general practitioner M.D. He came when called, and did his best with whatever problems his patients might have had. The priests with Kakuyasu specialize. Those who choose to specialize in home funerals can do nothing but home funerals. Others can do nothing but pet kuyo. Still others can focus on counseling.

2. The lost community. -- What Kakuyasu cannot do is to replicate the role that a temple might play in connecting parishioners with each other and in giving them a community within which to live their lives, to support each other, and to weather the liminal events that will inevitably threaten their worlds. Japanese Buddhism has not traditionally provided regularly scheduled congregational services. Community residents visited the temple for the annually scheduled rituals and the requisite funerary services, but did not otherwise meet regularly at the temple. Yet the village temple was still a focus for festivals and other events that celebrated the village as a village -- and a prominent node in the elaborate social networks within the village.

Kakuyasu cannot provide that community. It is -- literally -- a nexus of contracts, and nothing more. Yet Hashimoto's protestations to the contrary notwithstanding, temples like Hashimoto's Kenshoin compete mostly on price anyway. Against Kakuyasu, Kenshoin is bound to lose on price.

3. Contracting for compassion. -- The web-based dispatch services pose a question: is the temple only a nexus of contracts? It is, of course, but the dispatch services effectively pose a question that is crueler still: how much of a premium in price are Japanese willing to pay for that extra value that the temple provides? Conversely, how much of a price cut will priests take to match the dispatch-service prices before closing their temples?

Takashi Uriu worked as a systems engineer before becoming a priest.<sup>66</sup> In a recent essay, he describes his life at a small temple. A few priests are wealthy, he writes, but they are rare. Most priests cannot pay the rent as priests. They try to find a second job.

I serve in the Jodo shin denomination .... Our founder Shinran came down from the mountain and walked among the people. Many resident priests think it important to do the same. They make ends meet as a laborer, and walk the way of the nembutsu [calling on Amida Buddha for mercy] with their parishioners."

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<sup>65</sup> See website at <https://kakuyasuso.jp/obosan/>.

<sup>66</sup> Takashi Uriu, "Chumon' sareru soryo ga akasu amazon soryo haken saabisu no jittai [The Reality of the Amazon Priest-Dispatch Service, as Revealed by a Priest Who Gets 'Ordered'], Ironna, available at: <https://ironna.jp/article/3107>.

Of course, the towns where the temples find it hard to stay solvent are also the towns where a priest will find it hard to locate a second job. If he does, his employer may not sympathize with the demands of the priesthood.

Because of this, I registered with a priest-dispatching service. I immediately started getting many requests, and was going east and west every day.

He was surprised, says Uriu:

I had thought that the people who would use these services were people who didn't want to spend time with priests. I thought they used the service simply because they had to -- they needed to hold a funeral. ...

I was wrong. At the wake and the funeral, we carry on ordinary conversations. But everyone is really interested [in the Buddhist message], and asks all sorts of questions. Some of them later asked for Buddhist services. Some of them wrote me letters, or said that they wanted to hear more. ...

Maybe some people think, "it's not that Buddhism is important. [The people at the wake] are just thinking about the person they've lost." But these days lots of people do a funeral and memorial without a priest. The fact that they'd go on the internet and ask for a priest means, I think, that they care about Buddhism.

As Victor Turner put it many years ago, the funeral is a liminal event. Uriu continued:

These are occasions so full of sadness that the family members cannot even put it into words. When we come to such places, we realize the limits to "companionship" among human beings. And each time we realize those limits, I want to convey the true compassion, the compassion of the Buddha.

His fellow priests do not necessarily sympathize:

Once at a study group, a resident priest from a big temple said, "I don't want to run around to funeral homes with my head bowed, trying to increase the number of parishioners. That's unseemly." But unseemly as it is, we do it because there's something more important here. Priests who get lots of funeral requests and have hired cars come pick them up at the temple will never understand this. ...

Uriu may as well have been quoting Graham Greene's "whiskey priest" in The Power and the Glory:

We're priests, but we ... drink. We marry. We worry about our own lives, and we send our children to schools.... In ordinary life, there's virtually no difference between someone who's a priest, and someone who's not.

So why are people paying several 10,000's of yen to have people like us come and hold a commemoration? It must be because they appreciate that there is a deeper Buddhist truth here.

Personally, I don't care if people think it's a commercial product. Sure, there're big problems with the priest-dispatch services ... on Amazon.com. I know that. But if I'm called, I'll go. I'll do my best to speak to the grief. And in the midst of that grief, I'll do my best to convey the truth at the heart of Buddhism.

### C. The American Parallel:

Among the many lessons of turn-of-the-century American sociology of religion is this: religious institutions do not just compete on price. Contrary to the claims of scholars like Peter Berger in the 1960s and 1970s, secularization does not describe the American religious scene. The once gloriously well-endowed Protestant mainline make no demands on their parishioners. They

charge a low "price," and continue their relentless decline. The quintessential "church" (to Weber and Troelsch) and "low-tension" group (to Rodney Stark), the mainline denominations relentlessly hemorrhage followers -- at the United Church of Christ, from 2.2 million members in 1957, to 1.8 million in 1977, 1.4 million in 1997, and 854,000 in 2017.<sup>67</sup> At the same time, however, many comparatively impoverished congregations demand substantial sacrifices of their followers. They charge a high "price," and thrive.

The traditional Japanese temples continue their steady decline as well. From time to time, much more demanding -- high priced -- innovative groups have appeared: the Soka gakkai in mid-century, Aum in the final decades.<sup>68</sup> In the meantime, men and women like Takashi Uriu continue to quit their jobs as systems engineers and join the priesthood. They join the low-tension denominations, and cannot hope to earn a comfortable living. But they do it because they care. If people facing death call, they go.

## VI. Conclusions

As the Japanese government liberalized abortion access after the war, Japanese women began aborting their children (they do not call them fetuses) in large numbers. Soon, many women began asking temples to perform commemorative ceremonies for these children. Women still do. Temples respond by advertising their commemorative ritual, and the fees which they charge for the service.

Traditionally, priests stood ready to offer counseling and ritual as needed during existentially troubling passages in life. In exchange, local communities effectively kept the temples on retainer. Yet as religious groups in low levels of tension with the surrounding society (as Stark put it), Japanese temples could never rely on their parishioners giving voluntarily; low-tension churches never can. Instead, they counted on the tightly intertwined social network within the local community to enforce the regular giving.

Over the course of the 20th century, Japanese migrated out of these tightly structured villages to the more anomic cities. Without a coercive village structure, the low-tension temples can no longer rely on (what was in effect) a retainer-fee. With that first-best contract unavailable, many temples see no option but to rely entirely on fee-for-service arrangements. Of the arrangements, the most notorious remains the commemorative ritual for aborted children.

In this market for fee-based religious services, temples now find themselves competing with internet-based priest-dispatch services. The internet services offer no community. Some temples try to compete by fostering that community, and by integrating their parishioners within the dense network of social ties that can bring coherence to life. They find it hard to generate income except through fee-for-service arrangements, however, and in that market they find it hard to undersell the internet dispatch services.

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<sup>67</sup> Greg Smith, *So What Faith*, Oct. 28, 2018; available at <http://sowhatfaith.com/2018/10/28/6-decades-of-decline-in-the-united-church-of-christ/>.

<sup>68</sup> Lorne L. Dawson, *The Cultural Significance of New Religious Movements: The Case of Soka Gakkai*, 62 *Sociology of Religion* 337 (2001); Levi McLaughlin, *Did Aum Change Everything?*, 39 *Japanese J. Religious Stud.* 51 (2012).

**Table 1: Abortion Trends Over Time**

	Abortions (Japan)	Abortions/ live births (%) (Japan)	Abortions/ /LB (%) (U.S.)
1950	320,150	13.7	
1955	1,170,143	67.6	
1957*	1,122,316	71.6	
1960	1,063,256	66.2	
1965	843,248	46.2	
1970	732,033	37.8	
1975	671,597	35.3	
1980	598,084	37.9	35.9
1985	550,127	38.4	35.4
1990	456,797	37.4	34.5
1995	343,024	28.9	31.1
2000	341,146	28.7	24.6
2005	289,127	27.2	23.3
2010	212,694	19.9	22.8
2015	176,388	17.5	18.8
2017	164,621	17.4	

Notes: \* Peak post war abortion rate

Sources: Kokuritsu Shakai hosho jinko mondai kenkyujo, Jinko tokei shiryō shu [Materials on Population Statistics] (2019), as available at [http://www.ipss.go.jp/syoushika/tohkei/Popular/P\\_Detail2018.asp](http://www.ipss.go.jp/syoushika/tohkei/Popular/P_Detail2018.asp), based on data from Ministry of Health & Labor; Center for Disease Control, Division of Reproductive Health, Abortion Surveillance System (various years);

**Table 2: Hyogo Temples, Total and Mizuko, by Denomination**

	Total Temples %	Mizuko Temples	Mizuko/ Total
Tendai	166 (4.4)	7	.0422
Shingon	798 (21.3)	27	.0338
Jodo	369 (9.9)	5	.0136
Jodo shin	1148 (30.7)	0	0
Nichiren	166 (4.4)	10	.0645
Soto Zen	392 (10.5)	8	.0204
Rinzai Zen	356 (9.5)	6	.0169
Other	348 (9.3)	7	.0201
Total	3743	70	.0187
	If exclude Jodo shin:		.0270

Sources: Total temples, from Hyogo no otera ichiran [List of Hyogo Temples], as of July 2020, from NokotsudoInfo, at <https://www.nokotsudo.info/list/hyogo.html>; mizuko temples, by internet search, July 2020.

**Table 3: Population per Temple, by Municipality**

1.	Nishinomiya	6187.7
2.	Ashiya	5827.4
3.	Kawanishi	4469.2
4.	Itami	3700.5
5.	Akashi	3637.0
37.	Yabu	395.5
38.	Ichikawa	369.1
39.	Kamikawa	361.4
40.	Sasayama	335.4
41.	Asago	324.9

Sources: Total temples, from Hyogo no otera ichiran [List of Hyogo Temples], as of July 2020, from NokotsudoInfo, at <https://www.nokotsudo.info/list/hyogo.html>; population from Somu cho tokei kyoku, Kokusei chosa [Vital Statistics] (various years), available from [www.e-stat.go.jp](http://www.e-stat.go.jp).

**Table 4: Websites per Temple, by Municipality**

		Web/Temple	Pop/Temple
1.	Fukusaki	.120	793.2
2.	Kawanishi	.114	4469.2
3.	Nishinomiya	.103	6187.7
4.	Taishi	.095	1592.3
5.	Kakogawa	.092	2723.8
6.	Shiso	.088	718.2
7.	Sanda	.087	1655.3
8.	Harima	.077	2552.5
9.	Itami	.075	3700.5
10.	Akashi	.075	3637.0

Sources: Web temples: internet search as of July 2020; total temples, from Hyogo no otera ichiran [List of Hyogo Temples], as of July 2020, from NokotsudoInfo, at <https://www.nokotsudo.info/list/hyogo.html>; population from Somu cho tokei kyoku, Kokusei chosa [Vital Statistics] (various years), available from [www.e-stat.go.jp](http://www.e-stat.go.jp).

**Table 5: Mizuko Kuyo Temples, by Municipality**

	Population	Mizuko temples	All temples
Kobe	1,544,000	14	1027
Himeji	536,000	10	378
Amagasaki	453,000	6	128
Tanpa	68,000	5	168
Kakogawa	267,000	3	98
Kasai	48,000	3	77

Notes: Mizuko kuyo temples are those temples whose provision of mizuko kuyo can be confirmed publicly on the internet.

Sources: Mizuko temples: internet search as of July 2020; total temples, from Hyogo no otera ichiran [List of Hyogo Temples], as of July 2020, from NokotsudoInfo, at <https://www.nokotsudo.info/list/hyogo.html>; population from Somu cho tokei kyoku, Kokusei chosa [Vital Statistics] (various years), available from [www.e-stat.go.jp](http://www.e-stat.go.jp).

**Table 6: Denominational Distribution, by Population**

	Large cities		Small municipalities	
	Temples	%	Temples	%
Tendai	75	3.73	91	5.25
Shingon	376	18.71	422	24.35
Jodo	207	10.30	1262	9.35
Jodo shin	725	36.07	423	24.41
Nichiren	104	5.17	62	3.58
Soto Zen	109	5.42	283	16.33
Rinzai Zen	160	7.96	196	11.31
Other	254	12.64	94	5.42
Total	2010	100	1733	100

Notes: Large cities: 10 municipalities with population over 100,000; small municipalities: 31 municipalities with population under 100,000.

Sources: Total temples, from Hyogo no otera ichiran [List of Hyogo Temples], as of July 2020, from NokotsudoInfo, at <https://www.nokotsudo.info/list/hyogo.html>; population from Somu cho tokei kyoku, Kokusei chosa [Vital Statistics] (various years), available from [www.e-stat.go.jp](http://www.e-stat.go.jp).